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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,374	10/10/2002	Achim Seibertz	201-0493	1010

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FORD GLOBAL TECHNOLOGIES, LLC.
SUITE 600 - PARKLANE TOWERS EAST
ONE PARKLANE BLVD.
DEARBORN, MI 48126

EXAMINER

ESTREMSKY, SHERRY LYNN

ART UNIT PAPER NUMBER

3681

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,374

Applicant(s)

SEIBERTZ ET AL.

Examiner

Sherry L Estremsky

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11, 13-16, 21-25 and 27-30 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 2-5, 8-11, 13-16, 21-25 and 27-30 is/are allowed.
6) ☒ Claim(s) 6 and 7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 10 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The receipt of the amendment dated March 11, 2004 of the application 10/065,374, including amendments to the claims and cancellation of claims 1, 12, 17-20, 26, and 31-34, is acknowledged. (It has been noted that the REMARKS/ARGUMENTS section of the applicant's response states that claims 31 and 34 are dependent on re-written claims, however, the current listing of claims shows claims 31 and 34 to be cancelled.)

This is the second Office Action on the merits of application 10/065,374, with claims 2-11, 13-16, 21-25, and 27-30 pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al., U. S. Patent 6,283,086.

Yamamoto et al. discloses a method for controlling an on/off state of an internal combustion engine disposed in a motor vehicle, the running internal combustion engine capable of being automatically switched off, the method comprising the step of suppressing the capability

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of automatically switching off in response to detection of a stop-and-go situation (traffic congestion). See col. 2, 11. 24-37.

The method further comprises the step of discontinuing the suppression of the switching off when a predetermined waiting time has elapsed. See col. 8, 11. 34-36.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al.

Yamamoto et al. discloses all of the limitations of claim 7 except for the limitation requiring the waiting time to be "approximately 5 seconds". Yamamoto et al. discloses that the stopping of the operation of the engine is prohibited for only a "predetermined length of time." Col. 8, 11. 34-36. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set the "predetermined length of time" in Yamamoto et al. to "approximately 5 seconds" because it has been held that "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Allowable Subject Matter

5. Claims 2-5, 8-11, 13-16, 21-25, and 27-30 are allowed.

Response to Arguments

6. Applicant's arguments filed March 11, 2004 have been fully considered but they are not persuasive. The applicant first states that the Yamamoto et al. patent describes prohibiting stopping of the engine for a predetermined period of time, and the examiner agrees with this. The examiner does not agree, however with the later statement that the Yamamoto et al. patent discloses stopping the engine and measuring the time the engine has stopped. The paragraph in column 8, lines 23-26 copied by the applicant discusses prohibiting stopping the engine, so that the engine does not stop. The main subject of the paragraph is an embodiment in which this prohibiting mode lasts only for a predetermined length of time. In other words, the disclosed method discontinues prohibiting (suppression) the stopping (switching off) of the engine when a predetermined time has elapsed, just as claimed in claim 6. The applicant also states that the current invention prohibits stopping of the engine when a predetermined waiting time has elapsed and that a wait time is measured to determine whether to prohibit stopping of the engine. These statements appear to be saying that when a stop-and-go situation is detected, the engine is allowed to stop for a predetermined waiting time, then it is determined whether to prohibit stopping of the engine. This is neither claimed nor disclosed. Both the patented invention and the current invention prevent stopping the engine until a predetermined time has elapsed (the suppression or prohibiting is discontinued when the time has elapsed).

Conclusion


7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherry L Estremsky whose telephone number is (703) 308-2164. The examiner can normally be reached on Tuesday and Friday from 7:30 a.m. to 6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on (703) 308-0830. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SLE 5-11-04


SHERRY ESTREMSKY
PRIMARY EXAMINER
AU3681